

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 08/945,459  
Applicant : Makishima et al  
Filed : December 9, 1997  
TC/A.U. : 1647  
Examiner : David S. Romeo

Docket No. : 2923-588  
Customer No. : 06449  
Confirmation No. : 2741

TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL  
DOUBLE PATENTING REJECTION OVER A PENDING SECOND APPLICATION

Director of the United States Patent  
and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

The owner, Biopharm Gesellschaft zur Biotechnologischen  
Entwicklung von Pharmaka mbH, of Heidelberg, Germany has a 100  
percent interest in the instant application hereby disclaims,  
except as provided below, the terminal part of the statutory term  
of any patent granted on the instant application, which would  
extend beyond the expiration date of the full statutory term  
defined in 35 U.S.C. 154 to 156 and 173 as shortened by any  
terminal disclaimer filed prior to the grant of any patent  
granted on pending second Application Serial No. 10/365,231,  
filed on February 12, 2003, of any patent on the pending second  
application. The owner hereby agrees that any patent so granted  
on the instant application shall be enforceable only for and  
during such period that it and any patent granted on the second

05/10/2006 BABRAHA1 00000027 022135 08945459

01 FC:1814

130.00 DA

E-mail [info@biopharm.de](mailto:info@biopharm.de)  
Web [www.biopharm.de](http://www.biopharm.de)

Volksbank Heidelberg  
(BLZ 672 900 00)  
Konto-Nr. 32 30 20 09

Michael Pohlmann,  
Dr. Jens Pohl,  
Dr. Benedikt Merz

Serial No. 08/945,459

Page 2

application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Statement under 37 C.F.R. 3.73(b)

Biopharm Gesellschaft zur Biotechnologischen Entwicklung von Pharmaka mbH is the assignee of 100 percent interest in the instant application, by virtue of an assignment recorded on May 26, 2005 in the U.S. Patent and Trademark Office at Reel 015371 and Frame 0430.

Serial No. 08/945,459

Page 3

The undersigned, whose title is supplied below, is empowered to act on behalf of the owner.

Declaration


The undersigned hereby declares that all statements made herein of his/her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Biopharm Gesellschaft zur  
Biotechnologischen Entwicklung von  
Pharmaka mbH

By:

Signature

Typed Name: *Dr. Michael Kruse*Typed Title: *Head of Patent Department*Date: *Nov 11, 2005*

 **BIOPHARM**  
Gesellschaft zur biotechnologischen  
Entwicklung von Pharmaka mbH  
Czernyring 22 · D-69115 Heidelberg  
Tel (06221) 53 83-0 · Fax 53 83 44 20